

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT WILLIAM KATTULA-DOWELL,

Defendant-Appellant.

UNPUBLISHED

December 19, 2006

No. 264179

Oakland Circuit Court

LC No. 04-199112-FH

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of two counts of operating a vehicle under the influence causing serious impairment of a body function, MCL 257.625(5), possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v), and for possession of methamphetamine/Ecstasy, MCL 333.7403(2)(b)(i). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In his sole issue on appeal, defendant argues that the trial court erred when it denied his motion to dismiss the charges against him based on violation of his right to a speedy trial. See US Const Am VI; Const 1963, art 1, § 20.¹ Courts consider four factors when determining whether a defendant was denied his right to a speedy trial: (1) the length of the delay, (2) the reasons for the delay, (3) the defendant's assertion of his right and (4) any prejudice to the defendant resulting from the delay. *People v Collins*, 388 Mich 680; 202 NW2d 769 (1972), adopting the analysis set forth in *Barker v Wingo*, 407 US 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972); see also *People v McLaughlin*, 258 Mich App 635, 644; 672 NW2d 860 (2003).

In this case, the delay was just over seven months, which is significantly below the 18 months after which prejudice is presumed. *McLaughlin, supra* at 644; *People v Wickham*, 200 Mich App 106, 109-110; 503 NW2d 701 (1993). Furthermore, the delay was largely the result of witness unavailability and problems with docketing. Although the prosecutor is held

¹ Although defendant cites MCR 6.004(D) in his statement of the question presented, defendant did not present an argument based on this rule. Therefore, we shall limit our discussion accordingly.

responsible for unintentional delays such as docket congestion, delays of this nature are weighed less heavily than deliberate delays intended to hamper the defense. *Strunk v United States*, 412 US 434, 436; 93 S Ct 2260; 37 L Ed 2d 56 (1973); *People v Gilmore*, 222 Mich App 442, 460; 564 NW2d 158 (1997). Likewise, defendant failed to assert his right to a speedy trial until the morning his trial began, which weighs heavily against a determination of prejudice. See *People v Cleveland Williams*, 475 Mich 245, 263; 716 NW2d 208 (2006). Finally, the only prejudice defendant claims is prejudice to his person caused by his incarceration. Because defendant was already incarcerated on other charges, the burden of incarceration cannot properly be attributed to any delay in bringing defendant to trial. *People v Holtzer*, 255 Mich App 478, 493; 660 NW2d 405 (2003).

Because the length of the delay was not particularly significant, was the result of unintentional conduct and did not prejudice his defense, we cannot conclude that the trial court erred in denying defendant's motion.

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly